IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 4876 of 2007(E)

OS.1324/2002 of III ADDL.M.C.,TRIVANDRUM

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PETITIONERS:

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1. HERBIN HELTON, VERGENTEENA VILLA, KOCHUTHOPPIL, MUTTATHARA VILLAGE, THIRUVANANTHAPURAM (MINOR) REP. BY HIS FATHER AND NATURAL GUARDIAN, HELTON ANTONY.

2. HELTON ANTONY, DO. DO.

BY ADV. SRI.BIJU BALAKRISHNAN

RESPONDENTS:

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1. JEROM DICRUSE, RESIDING AT PALLITHURA, HOUSE NO.947001/0285, ATTIPPARA VILLAGE, THIRUVANANTHAPURAM.

2. FRANCIS XAVIER, KINATTDIVILAKATHU VEEDU, VALIYATHURA, THIRUVANANTHAPURAM.

3. IGNATIOUS MASCRINAS, DO. DO.

4. RUDOLF KRISTOPHER, DO. DO.

BY ADV. SRI.M.RAMASWAMY PILLAI FOR R1.
SRI.P.M.JOSEPH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE COMMISSION REPORT DTD. 22.9.2003 PREPARED BY THE ADVOCATE COMMISSIONER MRS. NASEEM SHUKUR KHAN.

EXT.P2: COPY OF THE PLAN PREPARED BY THE TALUK SURVEYOR.

EXT.P3: COPY OF THE OBJECTION DTD. 17.11.2003 AGAINST EXT.P1 AND P2, FILED BY THE PETITIONERS BEFORE THE COURT BELOW.

EXT.P4: COPY OF THE I.A.NO.3278/04 IN O.S.NO.1324/02 AND THE AFFIDAVIT ATTACHED TO IT.

EXT.P5: COPY OF THE ORDER DTD. 31.5.2005 IN I.A.NO.3278/2004 IN O.S.NO.1324/2004 OF THE 3RD ADDL. MUNSIFF COURT, THIRUVANANTHAPURAM.

EXT.P6: COPY OF THE JUDGMENT DTD. 29.6.2006 IN W.P.(C).NO.20993/2005 OF THIS HON'BLE COURT.

EXT.P7: COPY OF THE REPORT DTD. 30.9.2006 OF THE ADVOCATE COMMISSIONER.

EXT.P8: COPY OF THE SAID ORDER DTD. 9.1.2007 IN I.A.NO.10868/2006 AND I.A.NO.10778/2006 IN O.S.NO.1324/2002 OF THE 3RD ADDL.MUNSIFF COURT, THIRUVANANTHAPURAM.

RESPONDENT'S EXHIBITS: NIL

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// TRUE COPY //

M.N.KRISHNAN, J

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W.P.(C) No.4876 OF 2007

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Dated this the 24th day of July, 2007

JUDGMENT

This writ petition is filed to set aside Ext.P8 order in O.S.No.1324 of 2002 pending before the III Addl.Munsiff's Court, Thiruvananthapuram. Plaintiffs are claiming right over 5 cents of property comprised in Sy.No.2938/8/3/1 in Muttathara Village. According to the plaintiffs, the said property was obtained by virtue of a sale deed No.294/2000 and the purchaser of the plaintiffs got the property by virtue of a gift deed No.1015/1996.

2. On the other hand, defendants would contend that the property described in the plaint schedule was obtained by them in pursuance of a decree of a civil court which they purchased. Now the real dispute that is to be resolved in the case is whether there is any property as contended by the plaintiffs and defendants. The officials report that no survey certificate, survey sub division number and plan of the property comprised in Sy.No.2938 are available. Since plaintiffs claim right over the property under Sy.No.2938/8/3/1, the matter to be decided is which is the survey

separating the line between the other properties. Now the Commissioner who revisited the property after the directions made by this court was again in a helpless situation for the non-availability of a proper plan to demarcate the property. The documents produced were in the form of basic tax receipts and some possession certificate which by any stretch of imagination can be of any help to the Commissioner to locate the property. Now evidence is let in. The court has also arrived at a decision that in the absence of materials the Commissioner could not be found fault with and it cannot be set aside. In order to resolve the controversy between the parties, it may be necessary to have an idea about the property, survey sub division number, etc. If the plaintiffs succeed in producing such a plan or request the authorities in control of the survey plan to produce the same and if the court is satisfied that there is such a sub division, it is still a matter that can be looked into at the stage of evidence. Even other wise if the plaintiffs are able to establish their possession over the property on the date of suit, they may be entitled to a decree, or, in other words, since both the plaintiffs and defendants are claiming possession over the same property, ultimately the court has to enter into a finding regarding the factum of possession. So, irrespective of the Commissioner's report the court has to independently consider the question in the broad aspect and decide the matter in

accordance with law. Plaintiffs are at liberty to adduce evidence against the Commissioner's report, if they feel that it is wrong even at the trial stage and just because somebody is examined at the time of setting aside the Commissioner's report, it shall not be a bar for them from adducing such evidence. Needless to say that the same benefit is extended to the defendants as well.

With the above observation, writ petition is disposed of.

M.N.KRISHNAN, JUDGE

Cdp/-